IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5651 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

PATEL FULABHAI DESAIBHAI

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR DM THAKKAR for Petitioner

MR MUKESH PATEL for Respondent No. 1

None present for Respondent No. 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03-03-97

C.A.V. JUDGEMENT

1. Challenge is made by the petitioner, to the order of the respondent dated 15-11-1983, annexure `F' under which he was ordered to be compulsorily retired from the Government services after holding a departmental inquiry.

2. The writ petition has come up for admission before this Court on 25th November, 1983. Notice was

issued to respondents and interim relief in terms of Para No.25(c) was ordered to be granted. Thereafter, rule was made and interim relief was ordered to be continued. Para No.25(c) of the Special Civil Application reads as under:

> "YOUR LORDSHIPS be pleased to suspend the operation and implementation of the impugned order dated 15-11-1983 at annexure `F' to the petition pending admission, hearing and final disposal of this petition."

3. The counsel for the petitioner made a statement before this Court that during the pendency of this Special Civil Application, the petitioner has already retired from the government service on obtaining his age of superannuation. This fact has not been controverted by the counsel for the respondent.

4. The counsel for the petitioner has challenged the order impugned in this Special Civil Application on the ground, namely, that the inquiry report was not given to the petitioner along with the show-cause notice, and as such, it has caused prejudice to the petitioner, and whole of the inquiry proceedings vitiate only on this ground. It has next been contended that the authority who made the order was not competent to pass the order. The petitioner's appointment was made by the authority equal in status to the District Development Officer whereas the order of penalty has been made by Dy. District Development Officer, lower in status. The order deserves to be set aside only on this ground. In support of this contention, reliance has been placed on the decision of Hon'ble Supreme Court in the case of Krishna Kumar vs. Divisional Asstt. Electrical Engineer, Central Railway reported in AIR 1979 SC 1912. Lastly, the counsel for the petitioner contended that it is a case where the petitioner was chargesheeted with the charge of negligence in discharge of duties and the penalty of compulsory retirement which has been given to him is highly disproportionate to the guilt. It is not a case where there are charges that the petitioner has made the entry in the revenue record with some ulterior motive or for some gains.

5. On the other hand, the counsel for the respondent contended that there are serious charges against the petitioner of tampering with the record. The penalty of compulsory retirement which has been given to the petitioner is not excessive. So far as the contention of the counsel for the petitioner of non-supply of inquiry

report to the petitioner is concerned, the counsel for the respondent contended that it is a matter of year 1983, and as such, Moh'd. Ramzan Khan's case is of little help to the petitioner. The counsel for the respondent contended that the petitioner has not raised the objection that the authority below the rank of appointing authority has given the major penalty in reply to the show-cause notice. Otherwise also, there is nothing on record that the appointing authority of the petitioner was District Development Officer. So far as the last contention is concerned, the counsel for the respondent contended that it is a serious mater where the minimum penalty should have been dismissal, but here is a case where lenient view has been taken.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. In para No.6 of the Special Civil Application, the petitioner has made a grievance that the copy of the inquiry report was not given to him. The Hon'ble Supreme Court explained its earlier decision in the case of Union of India vs. Mohd. Ramzan Khan reported in 1991 (1) SCC 588 in its later decision in the case of MD, ECIL Hyderabad vs. B.Karunakar reported in JT 1993 (6) SC 1. The contention of the counsel for the petitioner may be correct, but after the later decision of the Hon'ble Supreme Court in the case of MD, ECIL, Hyderabad vs. B. Karunakar (supra) only on the ground that inquiry report has not been given to the petitioner along with the show-cause notice, will not vitiate the proceedings as well as the order of penalty made. Apart from this, the petitioner has failed to show how any prejudice has been caused to him due to non-supply of the inquiry report. The only averment made that for want of inquiry report he was unable to avail of the opportunity of replying to the second show cause notice. That cannot be equated with causing of some prejudice. The petitioner has to plead and establish as a fact that on non-supply of the inquiry report, a prejudice has been caused to him in putting his defence or some of his rights, which is not the case here.

7. The second contention of the counsel for the petitioner is also equally without any substance. The petitioner in para No.10 of the Special Civil Application has come up with a case that he was appointed in 19-8-1955 by the District Panchayat Officer in erstwhile State of Saurashtra which is a post equivalent to the post of District Development Officer in the present set-up, but nothing has been produced on record to show that the District Panchayat Officer of the erstwhile

State of Saurashtra was equal in the status, rank and pay-scale to the post of District Development Officer. There is yet another reason which goes against the petitioner. The petitioner has not raised this objection in reply to the show-cause notice. The counsel for the petitioner has not stated anywhere in the writ petition that this point was raised in the reply to the show-cause. Non raising of this objection in reply to the show-cause notice goes against the petitioner and further it comes out that he was not considering it to be an objection of any substance and merits.

8. The last point raised by the counsel for the petitioner deserves to be accepted. In the case of B.C. Chaturvedi vs. Union of India reported in JT 1995 (8) SC 65, the Hon'ble Supreme Court has held that in the matter of punishment which is to be given to a delinquent employee on proved misconduct, this court can interfere where it considers the same to be shocking to its judicial conscience. Further Hon'ble Supreme Court has held that in such cases, the matter should be remanded back to the appellate authority or the disciplinary authority to decide what appropriate punishment should be given. Only in exceptional cases, this court can itself undertake the exercise to substitute the punishment for the punishment given to the delinquent employee. Though in all such matters, the proper course would have been to send the matter back to the appellate authority or the original authority, but looking to the fact that under the interim relief granted by this court the petitioner has completed his services and during the pendency of this Special Civil Application, he retired from the services after attaining the age of superannuation and would have been given all the retirement benefits on the basis of last pay drawn, the original authority may be in some difficulty to decide the matter. The petitioner has not filed the appeal and he straightaway approached this court by way of this Special Civil Application against the order of compulsory retirement. It is not in dispute that the order of compulsory retirement made in the present case was appealable. The petitioner has an alternative remedy of appeal against the said order.

9. Though this writ petition was not maintainable and it could have been dismissed on the ground of available of alternative remedy or the petitioner could have been asked to avail of this remedy, but that stage was when, this matter had come up for admission. This court has admitted this petition and interim relief has been granted. So I consider it to be appropriate in these facts to go on the question that by what

punishment, the penalty of compulsory retirement should be substituted. From the chargesheet, it is clear that the petitioner was chargesheeted for negligence. It is not the charge against the petitioner that he has made the entries in the revenue record of legal heirs of the person concerned with some ulterior motive or for some personal gains. There are no charges of any corruption against the petitioner. After going through the chargesheet, it appears to be a case of negligence in performance of duties by the petitioner. The name of the owner of the land of survey no.295-8 was Bhikabhai Raijibhai alias Somabhai Parmar. There is no survey no.295-8 in the village concerned. This survey number in the village concerned was 295-3 and the name of the owner of the said survey number was also Bhikhabhai Somabhai Patel. In the said khata, the petitioner has shown the name of legal heirs of Bhikhabhai Raijibhai alias Somabhai Parmar in form no.7/12. This act of the petitioner was said to be of misused the status of the post of Talati-cum-Mantri. Looking to the aforesaid fact, there is a possibility of some negligence, but merely using the word "misused the status" will not amount to a malice or malafide or something has been done with ulterior motive or for personal gains. Neither there is a charge of that nature nor any evidence. It is a case of negligence without any malafide intention or ulterior motive, and as such, the penalty of compulsory retirement is certainly harsh and excessive.

10. The question does arise what penalty should be given to the petitioner for the act of negligence. Negligence is there and the petitioner has to be penalised for the same. It is not the case where he deserves any outright exoneration of the charges. The respondents have not produced on record any material regarding the past services of the petitioner. Even the respondents have not filed any reply to the Special Civil Application. The petitioner has stated that it was a bonafide mistake and the entry was only provisional entry which was made during a hectic period of activity. Some other reasons have also been given by the petitioner that how this mistake has occurred. In the absence of any material on record regarding past services of the petitioner, I consider it to be appropriate that the penalty of compulsory retirement should be substituted by penalty of withholding of two grade increments with cumulative effect.

11. In the result, this writ petition succeeds in part. Though the petitioner was held to be guilty of charge of negligence, but the penalty of compulsory

retirement given to him is ordered to be substituted by the penalty of withholding of two grade increments. The respondents are directed to give effect to this order by reducing the pay of the petitioner by two grade increments and to refix his retirement benefits accordingly. The difference of salary which comes on the basis of giving effect to this order may not be recovered from the petitioner, but his pension and retirement benefits should be accordingly refixed and the difference of amount should be recovered from him in reasonable monthly installments from his pension. Rule is made absolute as indicated with no order as to costs.

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